



## **W** City of San Clemente, Increase In “Hotel” Guest Tax

Shall Ordinance No. 1657 be adopted to increase the transient occupancy tax (“TOT”) to 12½ percent in perpetuity, for an estimated annual increase of \$570,000, and to clarify the definition of “hotels” that are subject to the tax?

### What your vote means

YES	NO
A “YES” vote on the measure will increase the TOT from 10 to 12 1/2 percent, clarify the definition of “hotel” by including additional examples of structures that might be a “hotel,” and authorize the City Council to refine the TOT ordinance without voter approval, as long as the changes do not result in an extension or increase in the tax.	A “NO” vote on the measure will leave the TOT rate, the “hotel” definition, and the City Council’s authority unchanged.

### For and against

FOR	AGAINST
<p>Tim Brown Mayor, City of San Clemente</p> <p>Chris Hamm Mayor Pro Tem, City Council</p> <p>Lori Donchak Council Member, City of San Clemente</p> <p>Kathy Ward City Council Member, City of San Clemente</p>	<p>Cord Bauer, President Coalition to Save San Clemente</p> <p>Anthony Rubolino</p> <p>Jim Bieber</p> <p>Laura Ferguson</p> <p>Ken Royal</p>

Ballot Measures-WFull Text of Measure W  
City of San Clemente

ORDINANCE NO. 1657

**AN ORDINANCE OF THE CITY OF SAN CLEMENTE, CALIFORNIA, AMENDING CHAPTER 3.24 OF THE MUNICIPAL CODE TO INCREASE THE TRANSIENT OCCUPANCY TAX RATE TO 12½ PERCENT AND TO CLARIFY THE DEFINITION OF "HOTEL," SUBJECT TO APPROVAL OF A MAJORITY OF THE ELECTORS VOTING ON THE MEASURE AT THE GENERAL MUNICIPAL ELECTION TO BE HELD TUESDAY, NOVEMBER 6, 2018**

**WHEREAS**, under California Revenue and Taxation Code section 7280 *et seq.*, the City of San Clemente ("City") has authority to levy a transient occupancy tax ("TOT") on the privilege of occupying a hotel, including a short-term lodging unit or STLU, as defined in Chapter 3.24 of the Municipal Code; and

**WHEREAS**, the TOT is a general tax, the proceeds of which are deposited into the City's general fund. The general fund pays for essential City services such as police protection, fire and paramedic services, street operations and maintenance, library services, parks and recreation services, and general municipal services to the public; and

**WHEREAS**, many other municipalities have higher TOT rates than San Clemente does, such as the city of Malibu and Los Angeles County (12 percent), the city of San Diego (12.5 percent between TOT and a supplemental transient-lodging assessment), the cities of Los Angeles, Santa Monica, and San Francisco (14 percent), and the city of Anaheim (15 percent); and

**WHEREAS**, the TOT rate has not increased in 27 years; and

**WHEREAS**, the City desires to approve an increase of the TOT rate from the existing 10 percent to 12½ percent for general-tax purposes; and

**WHEREAS**, the proposed increase has been submitted to the voters at the general municipal election on Tuesday, November 6, 2018; and

**WHEREAS**, all other legal prerequisites to the adoption of this ordinance have occurred.

**NOW, THEREFORE**, the people of the City of San Clemente do ordain as follows:

**Section 1:** The definition of "hotel" in section 3.24.010 of the Municipal Code is amended to read in its entirety as follows:

"Hotel" means any structure, or any portion of any structure, that is occupied or designed for occupancy for short term, temporary, or impermanent lodging or sleeping purposes, including any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodging house, vacation rental, boarding house, rooming house, apartment house, dormitory public or private club, bed-and-breakfast, private single-family residence, private multi-family residence, condominium, townhouse, guest house, mobile home or house trailer at a fixed location, or other similar structure or portion thereof. Any reference in this chapter to "hotel" includes "STLU" (defined in this section), unless otherwise indicated.

**Section 2:** Section 3.24.020(A) of the Municipal Code is amended to read in its entirety as follows:

For the privilege of occupancy in any hotel, including an STLU, each transient is subject to and must pay a general tax in the amount of 12½ percent of the rent charged by the operator. Such tax constitutes a debt owed by the transient to the City, which is extinguished only by payment. The transient must pay the tax to the operator of the hotel, including an STLU, when the rent is paid. The tax is a general tax and all revenue from the tax shall be allocated to the City general fund.

**Section 3:** Section 3.24.020(E) is added to the Municipal Code to read in its entirety as follows:

Without voter approval, the City Council may repeal or amend any part of this chapter in any manner that does not result in an extension of or an increase in the tax above the rate approved by the voters, as enacted in subsection 3.24.020(A). If the City Council repeals any part of this chapter, it may subsequently reenact it without voter approval as long as the reenacted ordinance does not result in an extension or increase in the tax that is duly approved by the voters.

**Section 4:** If any part of this ordinance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining parts of the ordinance. The City declares that it would have adopted this ordinance, and each part of it, irrespective of the possibility that some part or parts of it might be declared invalid or unconstitutional.

**Section 5:** This ordinance relates to the levying and collecting of the City transient occupancy tax, which is a general tax, so the ordinance only takes effect if it is approved by a majority of the voters that vote on the ordinance at the November 6, 2018 General Municipal Election. If so approved, the ordinance becomes effective 10 days after the City Council declares and certifies the results of the election by resolution. The TOT shall be collected in the manner provided pursuant to Chapter 3.24 of the City Municipal Code.

**Section 6:** The City Clerk is hereby directed to publish this ordinance at least once, within 15 days after the election results are certified, in a newspaper of general circulation published and circulated in the City of San Clemente.



# Ballot Measures-W

## Impartial Analysis City of San Clemente Measure W

Measure W would:

- (1) increase the San Clemente's transient occupancy tax (TOT) from the current 10 percent to 12 1/2 percent;
- (2) clarify the existing scope of the definition of "hotel" in the TOT ordinance by including additional examples of structures that might constitute a "hotel" by virtue of a short-term occupancy;
- (3) authorize the City Council to repeal or refine the TOT ordinance without seeking voter approval, as long as the repeal or amendment does not result in an extension or increase in the tax that the voters approved.

The TOT is collected from persons who stay in hotels, motels, and similar lodging for fewer than 30 days. The existing tax is 10 percent of the hotel charge, and the passage of this measure would increase the tax by 2 1/2 percent. These taxes are collected by the hotel operator and typically transferred to the City on a quarterly basis. The TOT is a general tax, and the funds collected are authorized by law to be used for general government purposes and basic services, such as police, fire, public works, parks, and recreation programs. An increase in San Clemente's TOT from 10 percent to 12 1/2 percent is estimated to generate an additional \$570,000 in annual tax revenue.

State law requires general taxes to be approved by a majority of those voting on the tax measure. This measure has been placed on the ballot by the City Council.

A "YES" vote on the measure will increase the TOT from 10 to 12 1/2 percent, clarify the definition of "hotel" by including additional examples of structures that might be a "hotel," and authorize the City Council to refine the TOT ordinance without voter approval, as long as the changes do not result in an extension or increase in the tax.

A "NO" vote on the measure will leave the TOT rate, the "hotel" definition, and the City Council's authority unchanged.

s/ Scott C. Smith  
San Clemente City Attorney



# Ballot Measures-W

## Argument in Favor of Measure W

Increase Hotel Tourist Tax in the City of San Clemente

Vote 'Yes' on Measure W. The Transient Occupancy Tax (TOT), also known as the hotel tourist tax, is paid by hotel and vacation rental visitors to help support municipal services in San Clemente. A "Yes" vote would result in a modest tax increase to these visitors while providing much needed revenue for vital city services. Unlike many cities around us, the San Clemente TOT has not been changed since 1991. The rate increase from 10% to 12.5% would affect visitors to San Clemente hotels and short-term lodging establishments.

Measure W would generate approximately \$570,000 in new revenue annually to the San Clemente General Fund. It is a sensible approach to the challenge confronting our city of 65,000+ residents, as we strain to provide services to an estimated 2 million visitors each year. This new revenue would be 100% locally controlled and help provide enhanced fire and police protection, emergency response services, and improved maintenance of public areas such as beaches, parks, sidewalks and streets, and other services extensively used by tourists.

The San Clemente City Council supports this rate change as a practical answer to the recent and rapid increase in demand for city services while ensuring fiscal health. The TOT increase is an equitable way for visitors who utilize city services to pay their fair share.

Your City Council respectfully requests a "Yes" vote on Measure W, to help protect and maintain essential services and our local quality of life.

s/ Tim Brown  
Mayor, City of San Clemente

s/ Chris Hamm  
Mayor Pro Tem, City Council

s/ Lori Donchak  
Council Member, City of San Clemente

s/ Kathy Ward  
City Council Member, City of San Clemente

## Rebuttal to Argument in Favor of Measure W

By constantly creating illegal ordinances and illegal policy, the #1 Lawbreaker in San Clemente has become the City Council. They aren't "tough" – they're incompetent. THEY LOSE NEARLY EVERY LAWSUIT – TAXPAYERS PAY THE BILL. OVER \$5 MILLION IN LEGAL FEES.

They state that our TOT rate has not been changed since 1991. They don't say that if this tax increase passes OUR TOT TAX WILL BE MORE THAN OUR NEIGHBORING CITIES!

LAST ELECTION AFTER SC VOTERS REJECTED RAISING THE TOT TAX, three members of the Council, Brown, Hamm and Ward, voted to illegally spend taxpayer money for a ballot recount to overturn the election results. The cancelled it only after a resident filed a Temporary Restraining Order.

When the resident filed a public records request to see what happened, the city refused to provide records. He was forced to sue – THE JUDGE RULED THAT THE CITY ILLEGALLY VIOLATED THE RIGHTS OF THE PUBLIC TO SEE PUBLIC RECORDS DETAILING HOW THE COUNCIL AND STAFF CONSPIRED TO ILLEGALLY FUND THE BALLOT RECOUNT.

TAXPAYERS PAID NEARLY \$100,000 IN LEGAL FEES.

The city collected \$10.5 million from homeowners to solve our beach parking problems. They didn't add one parking spot – it became a slush fund for the council. Two homeowners successfully sued, forcing the city to return \$10.5 million to 6,200 homeowners.

TAXPAYERS HAD TO PAY \$1.5 MILLION IN LEGAL FEES.

Mismanagement shouldn't be rewarded with more taxpayer money. THIS TAX ISN'T DESIGNATED FOR LAW ENFORCEMENT. We don't need tax increases – we need new leadership.

s/ Ken Royal

s/ Jim Bieber

s/ Cord Bauer

s/ Anthony Rubolino

s/ Laura Ferguson



# Ballot Measures-W

## Argument Against Measure W

This tax increase is not necessary - the money will not be earmarked or dedicated to public safety. SC voted to reject this exact same tax increase two years ago.

Our City Council leads the county in spending on litigation - not for paying out people who slip on sidewalks - but for BAD PUBLIC POLICY. In the last five years, taxpayers have had to pay nearly \$5 MILLION DOLLARS IN ATTORNEY FEES because the City was successfully sued over and over again for its illegal actions.

Despite warnings, the Council approved a severely flawed ordinance it claimed would 'tackle' sober living homes in residential neighborhoods. The City was successfully sued. The legal settlement allowed the most notorious Sober Living Operator to INCREASE the number of its "facilities" in SC. The Council's incompetence cost taxpayers over \$1.1 million in legal fees and opened the door to allow more sober living homes in SC.

State law mandated that cities adopt zoning to allow for emergency shelters. Other cities complied. Our City Council refused to - it cost taxpayers nearly \$900,000 in legal fees and the City had to comply with the law anyway.

The City Council illegally altered the terms of how many outdoor signs could be at the Outlet mall. There was a contractual agreement on the number of signs prior to construction. The owner filed a lawsuit and prevailed. Cost to the taxpayers - nearly \$700,000.

Our City Manager makes over \$330,000; his Assistant gets over \$250,000. This same Assistant, who conceded that this increase is "basically just a boost to our revenues," charged \$500 on his city credit card to enter a golf tournament and played in the middle of a work day.

We need new city leadership who won't squander our money and who can be trusted --- NO BLANK CHECKS.

s/ Cord Bauer, President  
Coalition to Save San Clemente

s/ Anthony Rubolino

s/ Jim Bieber

s/ Laura Ferguson

s/ Ken Royal

## Rebuttal to Argument Against Measure W

Increase Hotel Tourist Tax in the City of San Clemente

Vote YES on Measure W. San Clemente residents enjoy an amazing quality of life, and the City of San Clemente believes that this exceptional quality of life is worth defending. Your vote today represents an investment in our quality of life. The Hotel Tourist Tax is a focused initiative that acknowledges and fairly addresses the wear and tear our community experiences as a result of the many people who visit our town each year.

YES on W helps maintain emergency medical, police and fire services. By far, the largest City commitment to your quality of life is the public safety budget which comprises 47% of the General Fund, but it continues to grow every year.

YES on W can help pay for the recent increase in legal costs. As of late, your city council has taken aggressive legal action against the TCA and their plans to build a Toll Road through San Clemente and has fought to retain an emergency room and hospital located in San Clemente. These legal battles are supported by the vast majority of residents, and the Council remains committed to the legal fight.

YES on W is a vote for a modest tax increase to be paid by hotel guests in San Clemente. It will help sustain San Clemente and supports the incredible quality of life we all enjoy.

s/ Tim Brown  
Mayor, City of San Clemente

s/ Chris Hamm  
Mayor Pro Tem, City of San Clemente

s/ Lori Donchak  
City Council Member, City of San Clemente

s/ Kathy Ward  
City Council Member, City of San Clemente